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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; G.M., Real Party in Interest.	E072822 (Super.Ct.Nos. FSB18000959 & J267447) OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Richard V. Peel, Winston Keh, and David J. Mazurek, Judges. Petition for writ of mandate is denied.

Jason Anderson, District Attorney, Eric M. Ferguson, Deputy District Attorney for Petitioner.

Mark D. Johnson, under appointment by the Court of Appeal, for Real Party in Interest.

No appearance by Respondent.

I.

INTRODUCTION

Petitioner, the People, challenge the criminal trial court's order granting, real party in interest, G.M.'s motion to transfer his case back to the juvenile court under recently enacted Senate Bill No. 1391 (Stats. 2018, ch. 1012, § 1) (SB 1391). The People argue the trial court erred in ruling SB 1391 is a constitutional amendment to Welfare and Institutions Code section 707,[1] as modified by the Public Safety and Rehabilitation Act of 2016 (Proposition 57). SB 1391 bars, in most instances, minors under the age of 16 from being tried in criminal (or adult) court. The People assert SB 1391 is unconstitutional because it is inconsistent with the intent and purpose of Proposition 57. We disagree and deny the People's petition for writ of mandate.

II.

FACTS AND PROCEDURAL BACKGROUND

In October 2017, the People filed a petition in juvenile court against G.M. under section 602 (case No. J267477). The petition alleges that, when G.M. was 15 years old, he committed various crimes on September 27, 2017, including murder (Pen. Code, § 187, subd. (a)), attempted murder (Pen. Code, §§ 664, 187, subd. (a)); second degree robbery (Pen. Code, § 211); and carjacking (Pen. Code, § 215, subd. (a)).

[1] Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

Proposition 57 barred the district attorney from directly filing in adult court criminal charges against G.M., a minor. Therefore, the prosecution filed a motion to transfer G.M. from the juvenile court to adult court under section 707, subdivision (a)(1).

In January 2018, at G.M.'s transfer hearing, the prosecution filed a probation department report recommending that the juvenile court find G.M. not suitable for juvenile court and that the district attorney prosecute him in adult court.

During the section 707 evidentiary transfer hearing in March 2018, the juvenile court found that G.M. was not amenable to rehabilitation in juvenile court and granted the prosecution's motion to transfer the case to adult court. The juvenile court dismissed the juvenile petition without prejudice (case No. J267447). G.M. was later arraigned in adult court.

In September 2018, the California State Governor signed into law SB 1391, codified in section 707, which generally bars 14- and 15-year-old offenders from being prosecuted in adult court.[2] SB 1391 took effect on January 1, 2019. SB 1391 changed section 707, subdivision (a) to read, in relevant part: "In any case in which a minor is alleged to be a person described in [s]ection 602 by reason of the violation, *when he or she was 16 years of age or older*, of any offense listed in subdivision (b) or any other

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[2] Section 707, subdivision (a)(2) provides the following rare exception: "In any case in which an individual is alleged to be a person described in [s]ection 602 by reason of the violation, when he or she was 14 or 15 years of age, of any offense listed in subdivision (b), *but was not apprehended prior to the end of juvenile court jurisdiction*, the district attorney or other appropriate prosecuting officer may make a motion to transfer the individual from juvenile court to a court of criminal jurisdiction." (Italics added.)

felony criminal statute, the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction." (Italics added.) Before enactment of SB 1391, section 707, subdivision (a)(1) stated that, when a minor is alleged to have committed any felony criminal offense at age 16 or older, or *any offense listed in section 707, subdivision (b) at the age of 14 or 15,* the district attorney could bring a motion to transfer the minor from juvenile court to adult court. (Former § 707, subd. (a)(1), eff. Nov. 9, 2016, to Dec. 31, 2018.)

In the instant case, on January 14, 2019, the People filed a brief arguing that SB 1391 was unconstitutional and therefore G.M. should not be transferred from adult court back to juvenile court. The matter was continued until May 23, 2019. In the interim, on April 30, 2019, the Court of Appeal, First Appellate District, Division Four, held in *People v. Superior Court (Alexander C.)* (2019) 34 Cal.App.5th 994, 997, 1004 (*Alexander C.*), that SB 1391 is constitutional. On June 26, 2019, the California Supreme Court denied the People's petition for review of *Alexander C.*

During the hearing on May 23, 2019, defense counsel made an oral motion to deny the People's request that the court find SB 1391 unconstitutional. Defense counsel also made a motion to transfer G.M. back to juvenile court under SB 1391. The trial court concluded *Alexander C.* was controlling and denied the People's request that the court find SB 1391 is unconstitutional. The court also granted G.M.'s motion to transfer G.M. back to juvenile court.

On May 28, 2019, the People filed a petition for writ of mandate seeking to reverse the order on May 23, 2019, transferring G.M. to juvenile court. The People also

requested a stay of the transfer order. On May 28, 2019, this court ordered the parties to show cause why the relief prayed for should not be granted. This court also ordered the proceedings stayed pending determination of the People's writ petition on the merits or until further order by this court. After this court ordered counsel appointed for G.M. in this matter, G.M. filed a return to the People's writ petition, arguing SB 1391 is constitutional. The People filed a traverse, responding to G.M.'s return.

III.

HISTORY OF PROPOSITION 57 AND SB 1391

Until the passage of Proposition 21 in 2000, the juvenile court was required to declare a minor unfit for the juvenile justice system before a district attorney could prosecute that minor in adult court. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305 (*Lara*).) With the passage of Proposition 21, district attorneys were required to charge directly in criminal court, minors 14 years old or older who were accused of specified murder and sex crimes. (Former § 602, subd. (b), repealed by Initiative Measure (Prop 57, § 4.1, approved Nov. 8, 2016, eff. Nov. 9, 2016).) As to other specified serious offenses, Proposition 21 provided district attorneys with discretion to charge minors 14 or older in adult court instead of in juvenile court. (Former § 707, subd. (d), repealed by Initiative Measure (Prop 57, § 4.2, approved Nov. 8, 2016, eff. Nov. 9, 2016).)

In November 2016, Proposition 57 rolled back the Proposition 21 provisions allowing district attorneys to file charges against minors directly in adult court. "For juvenile offenders, Proposition 57 'largely returned California to the historical rule' by

eliminating direct filing in criminal court." (*Alexander C., supra*, 34 Cal.App.5th at p. 998, quoting *Lara, supra*, 4 Cal.5th at p. 305; see also *People v. Superior Court (K.L.)* (2019) 36 Cal.App.5th 529, 535-538 (*K.L.*), for summary of historical development of relevant law preceding SB 1391.) Under Proposition 57, "'[c]ertain categories of minors . . . can still be tried in criminal court, but only after a juvenile court judge conducts a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated.'" (*Lara, supra*, 4 Cal.5th at pp. 305-306; accord, *Alexander C., supra*, at p. 998.) Proposition 57 permits district attorneys to request the juvenile court to transfer minors 16 or older, to adult court for any felony offense. (Former § 707, subd. (a)(1).) However, Proposition 57 limits transfer of 14 and 15 year olds to those who were accused of specified serious or violent offenses. (§ 707, subds. (a)(1), (b), repealed by Stats. 2018, ch. 1012 (SB 1391), § 1, eff. Jan. 1, 2019.)

After SB 1391 went into effect on January 1, 2019, "[SB] 1391 eliminate[d] the district attorneys' ability to seek transfer of 14 and 15 year olds from juvenile court to criminal court, save for a narrow exception if the minor is 'not apprehended prior to the end of juvenile court jurisdiction.' (§ 707, subd. (a)(2).) The Legislature declared that [SB] 1391 amended Proposition 57 and 'is consistent with and furthers the intent of Proposition 57.' ([SB] 1391, § 3.)" (*Alexander C., supra*, 34 Cal.App.5th at p. 998.)

IV.

LAW APPLICABLE TO AMENDING INITIATIVES

The key issue here is thus whether SB 1391 is a constitutional statutory amendment of the initiative, Proposition 57, codified in section 707.[3] The Legislature may amend an initiative statute by another statute only if (1) the Legislature amends the initiative statute by another statute approved by a vote of the people or (2) the initiative statute permits amendment without the electors' approval. (Cal. Const., art. II, § 10, subd. (c); *Alexander C.*, *supra*, 34 Cal.App.5th at p. 999.) Otherwise the amendment is unconstitutional. Proposition 57 expressly permits amendment by the Legislature, but only "so long as such amendments are consistent with and further the intent" of Proposition 57. (Voter Information Guide, Gen. Elect. (Nov. 8, 2016) text of Prop. 57, § 5, p. 145.) "Such a limitation upon the power of the Legislature must be strictly construed, but it also must be given the effect the voters intended it to have." (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1255-1256.)

Our assessment of the constitutionality of SB 1391 requires balancing these concerns, beginning with the presumption that the Legislature acted within its authority

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[3] We reject G.M.'s contention SB 1391 does not amend Proposition 57. The Legislative Counsel's Digest for SB 1391 (Sept. 30, 2018) expressly states SB 1391 amends Proposition 57: "This bill would repeal the authority of a district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in which a minor is alleged to have committed a specified serious offense when he or she was 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction, *thereby amending Proposition 57*. By increasing the number of minors retained under the jurisdiction of the juvenile court, this bill would impose a state-mandated local program." (Italics added.)

when enacting SB 1391. (*Alexander C., supra*, 34 Cal.App.5th at pp. 999-1000.) When assessing SB 1391, "we shall uphold the validity of [the legislative amendment] if, by any reasonable construction, it can be said that the statute furthers the purposes" or intent of Proposition 57. (*Amwest Surety Ins. Co. v. Wilson*, *supra*, 11 Cal.4th at p. 1256; accord, *Alexander C.*, *supra*, at p. 1000.) We review de novo the trial court's ruling that SB 1391 is a constitutional amendment of Proposition 57 that furthers the purposes and intent of Proposition 57. (*People v. Health Laboratories of North America, Inc.* (2001) 87 Cal.App.4th 442, 445.)

V.

DISCUSSION

The People argue that SB 1391 is unconstitutional because it does not further Proposition 57's purpose and intent. This same challenge to SB 1391 was recently raised and almost uniformly rejected by the Courts of Appeal. (*B.M. v. Superior Court* (2019) 40 Cal.App.5th 742 (4th Dist., Div. 2); *Alexander C.*, *supra*, 34 Cal.App.5th 994, 997 (1st Dist., Div. 4); *K.L.*, *supra*, 36 Cal.App.5th at pp. 540-541 (3rd Dist.); *People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360, 365 (*T.D.*) (5th Dist.), review granted Nov. 26, 2019, S257980; *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383, 386 (5th Dist.), review granted Nov. 26, 2019, S257773; *People v. Superior Court (S.L.)* (2019) 40 Cal.App.5th 114, 117 (6th Dist.), review granted Nov. 26, 2019, S258432.) The People urge this court to disregard these decisions and follow the dissents and the recent decision, *O.G. v. Superior Court* (2019) 40 Cal.App.5th 626, 628-629 (2nd Dist.) review granted Nov. 26, 2019, S259011), which assert SB 1391 is unconstitutional because it is

inconsistent with the intent of Proposition 57, which the People argue was to ensure the ability to continue transferring 14- and 15-year-old offenders to juvenile court. In the instant case, G.M. disagrees, arguing SB 1391 is consistent with the intent of Proposition 57 to remove the power of prosecutors to determine whether to charge certain juveniles in adult court and shift the power to the juvenile court to make the decision instead. We agree.

A. *Expressly Stated Purposes of Proposition 57*

Proposition 57's purpose and intent is stated in section two of Proposition 57's uncodified text, entitled "[p]urpose and [i]ntent," which states: "In enacting this act, it is the purpose and intent of the people of the State of California to: [¶] 1. Protect and enhance public safety. [¶] 2. Save money by reducing wasteful spending on prisons. [¶] 3. Prevent federal courts from indiscriminately releasing prisoners. [¶] 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles. [¶] 5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." (Voter Information Guide, Gen. Elect., *supra*, text of Prop. 57, § 2, p. 141.) In *Alexander C.*, the court concluded SB 1391 furthered these five purposes. (*Alexander C.*, *supra*, 34 Cal.App.5th at pp. 1000-1002.)

B. *Proposition 57 Purposes Stated in Paragraphs 4 and 5*

The Proposition 57 purposes quoted above in paragraphs 4 and 5 of Proposition 57's uncodified text, expressly address juvenile offenders, as opposed to the other three purposes stated in paragraphs 1, 2, and 3. Paragraph 4 states that Proposition 57 is intended to emphasize rehabilitation, especially for juveniles. In *Alexander C.*, the court

concluded SB 1391 furthers this goal by "ensuring that almost all who commit crimes at the age of 14 or 15 will be processed through the juvenile system. As the Assembly Committee on Public Safety concluded: 'Keeping 14 and 15 year olds in the juvenile justice system will help to ensure that youth receive treatment, counseling, and education they need to develop into healthy, law abiding adults.' (Assem. Com. on Public Safety, Rep. on [SB] 1391 (2017-2018 Reg. Sess.) as amended May 25, 2018, p. 4.) It is apparent that [SB] 1391 is consistent with and furthers Proposition 57's goal of emphasizing rehabilitation for juvenile offenders." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1000.)

SB 1391 also furthered the purpose of Proposition 57 stated in paragraph 5, of barring district attorneys from making the determination of whether to try a juvenile offender in adult court. Whereas Proposition 57 permitted prosecution in adult court of some 14 and 15 year olds who committed specified heinous crimes, SB 1391 further limited prosecuting in adult court most all 14- and 15-year-old juvenile offenders. In doing so, SB 1391, is consistent with Proposition 57's objective of barring the district attorney from filing charges against juveniles directly in adult court, thus keeping most juveniles under the age of 16 in juvenile court.

The court in *Alexander C.* explained that SB 1391 furthers Proposition 57's purpose stated in paragraph 5, by narrowing "the class of minors who are subject to review by a juvenile court for potential transfer to criminal court—eliminating most 14[] and 15[]year[]olds from consideration—but it in no way detracts from Proposition 57's

stated intent that, where a transfer decision must be made, a judge rather than a prosecutor must make the decision." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1001.)

The People urge this court not to follow *Alexander C.* on the grounds *Alexander C.*'s finding of constitutionality is irrational and it was wrongly decided. The People contend the *Alexander C.* court erred in concluding SB 1391 is consistent with the Proposition 57 purposes stated in paragraphs 4 and 5. The People argue that SB 1391 eliminated, with one rare exception,[4] a trial judge's authority provided in Proposition 57 to transfer to adult court offenders aged 14 or 15 years old. The People conclude that by eliminating this judicial transfer authority, the Legislature usurped the trial judge's authority, in violation of the separation of powers.

We disagree. There was no improper conflict between SB 1391 and the fundamental purpose of Proposition 57. The stated purpose in paragraph 5 of Proposition 57, of requiring "a judge, not a prosecutor, to decide whether juveniles should be tried in adult court," concerned eliminating the prosecutor's preexisting authority to file charges against juveniles directly in adult court. (Voter Information Guide, Gen. Elect., *supra*, text of Prop. 57, § 2, p. 141.) The paragraph 5 purpose is not inconsistent with SB 1391 barring charging 14- and 15-year-old juvenile offenders in adult court, other than in specified rare circumstances.

The analysis of Proposition 57, stated in the voter pamphlet, summarizes the initiative regarding juvenile offenders as making "changes to state law [section 707] to

[4] The rare exception provided in SB 1391 is when the offender is "not apprehended prior to the end of juvenile court jurisdiction." (§ 707, subd. (a)(2).)

require that youths have a hearing in juvenile court before they can be transferred to adult court. (Ballot Pamp., analysis by the Legislative Analyst, p. 56, [¶] 2.) The Proposition 57 analysis further elaborates that the juvenile transfer hearing measure "changes state law to require that, before youths can be transferred to adult court, they must have a hearing in juvenile court to determine whether they should be transferred. As a result, the only way a youth could be tried in adult court is if the juvenile court judge in the hearing decides to transfer the youth to adult court. Youths accused of committing certain severe crimes would no longer automatically be tried in adult court and no youth could be tried in adult court based only on the decision of a prosecutor." (Voter Information Guide, Gen. Elect., analysis by the Legislative Analyst, p. 56, [¶] 6.)

We reject the People's contention that the court in *Alexander C.* wrongly held that SB 1391 is consistent with Proposition 57's stated purposes in paragraphs 4 and 5, of rehabilitation and requiring a judge to authorize all transfers to adult court of juvenile offenders under the age of 16. As the court in *Alexander C.* explained, "[SB] 1391 takes Proposition 57's goal of promoting juvenile rehabilitation one step further by ensuring that almost all who commit crimes at the age of 14 or 15 will be processed through the juvenile system . . . [and] receive treatment, counseling, and education they needed to develop into healthy, law abiding adults.'" (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1000.) Therefore, SB 1391 is consistent with Proposition 57's purposes expressly stated in paragraphs 4 and 5 of Proposition 57's uncodified text.

C. *Proposition 57 Purposes Stated in Paragraphs 1, 2, and 3*

The remaining three Proposition 57 purposes expressly stated in paragraphs 1, 2, and 3 of Proposition 57's uncodified text do not directly address prosecution of minors. SB 1391 nevertheless is consistent with these purposes.

1. Purpose of Protecting Public Safety

As to the purpose stated in paragraph 1, of protecting and enhancing public safety, *Alexander C.* noted: "The proponents of Proposition 57 indicated that increasing the number of minors in the juvenile system protects and enhances public safety, since 'minors who remain under juvenile court supervision are less likely to commit new crimes.' (Voter Information Guide, Gen. Elect., *supra*, argument in favor of Prop. 57, p. 58.) It follows that the Legislature could reasonably conclude SB 1391 protects and enhances public safety because [SB] 1391 expands the category of minors who will remain in the juvenile system. (Accord, Assem. Com. on Public Safety, Rep. on [SB] 1391 (2017-2018 Reg. Sess.) as amended May 25, 2018, at p. 4 ['When youth are given age-appropriate services and education that are available in the juvenile justice system, they are less likely to recidivate'].)" (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1001.)

The People argue that public safety nevertheless is not protected and enhanced under SB 1391 by adjudicating in juvenile court violent 14- and 15-year-old juvenile offenders, because they will be released, at the latest, when they turn 25, without having been fully rehabilitated and without being placed on parole, rather than being prosecuted and sentenced in adult court to a much longer term. (See § 1769, subd. (d)(2).) The court in *Alexander C.* acknowledged and addressed this concern, concluding that, while the concern is understandable, it is mitigated by the district attorney's "ability to petition a

court to extend the duration of juvenile court jurisdiction if discharging a juvenile offender 'would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior.' (§ 1800, subd. (a).) Indeed, in signing [SB] 1391, the Governor 'considered the fact that young people adjudicated in juvenile court can be held beyond their original sentence' under section 1800. (Governor's message to Sen. on [SB] 1391 (Sept. 30, 2018) Sen. J. (2017-2018 Reg. Sess.) p. 6230.)" (*Alexander C., supra,* 34 Cal.App.5th at pp. 1001-1002.)

Under these circumstances, SB 1391 can reasonably be construed as promoting and enhancing public safety, consistent with Proposition 57, by increasing the number of juvenile offenders who will remain in the juvenile justice system receiving rehabilitation treatment, rather than being sent to prison, which is more likely to lead to recidivism. In addition, SB 1391 leaves intact prosecutors' ability to petition the juvenile court to extend its jurisdiction if discharging a juvenile offender "would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior." (§ 1800, subd. (a).) This provision recognizes that not every juvenile offender will be successfully rehabilitated and creates a safety valve for circumstances in which an offender remains dangerous.

2. Purposes of Reducing Wasteful Spending and Preventing Indiscriminate Release of Prisoners

SB 1391 is also consistent with, and furthers, Proposition 57's additional purposes stated in paragraphs 2 and 3, of saving money "by reducing wasteful spending on prisons" and preventing "federal courts from indiscriminately releasing prisoners." (Voter Information Guide, Gen. Elect., *supra*, text of Prop. 57, § 2, p. 141.) As stated in this regard in *Alexander C.*, "Proposition 57 was passed with the goal of 'reduc[ing] state prison and parole costs as . . . youths would no longer spend any time in prison or be supervised by state parole agents following their release.' (Voter Information Guide, Gen. Elect., *supra*, analysis by the Legislative Analyst, p. 57.) Proposition 57 was also designed to facilitate the state's compliance with a federal court order to 'reduce the prisoner population to 137.5% of the adult institutions' total design capacity,' so that federal courts would not order prisoners released to address overcrowding. [Citation.] Once again, [SB] 1391 promotes both of these goals by narrowing the class of minors who would be subject to a lengthy prison sentence in an adult institution." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1002.)

The People argue the purpose stated in paragraph 2 is "fundamentally vague" because it is unclear what policy outcome actually could alleviate "wasteful" spending. The People argue that the term, "wasteful," is inherently subjective and, furthermore, expenditures to house violent offenders are not "wasteful." We are unpersuaded by this argument. It is sufficiently clear that Proposition 57's stated purpose of saving money by reducing wasteful spending on prisons concerns reasonably cutting unnecessary prison

costs. SB 1391 furthers this purpose by substantially reducing the number of juvenile offenders transferred from juvenile court to adult court, which in turn reduces incarceration of juveniles in prison. The Legislature therefore could reasonably conclude that transferring juvenile offenders under the age of 16 to adult court and incarcerating them in prison, rather than rehabilitating them in juvenile court, constitutes wasteful prison spending.

Furthermore, when voting on Proposition 57, the voters likely recognized that the more juvenile offenders who remain in the juvenile justice system, the less money California would spend on "state prison and parole costs as . . . youths would no longer spend any time in prison or be supervised by state parole agents following their release." (Voter Information Guide, Gen. Elect., *supra*, analysis by the Legislative Analyst, p. 57.) Proposition 57 and SB 1391 potentially reduce prison spending by making it more difficult for prosecutors to try juvenile offenders in adult court. Because SB 1391 will necessarily result in fewer juveniles being transferred to the adult criminal justice system, there inevitably will be a reduction in incarceration of juveniles and prison spending.

As to Proposition 57's purpose stated in paragraph 3, the People argue that SB 1391 does not further this purpose of preventing federal courts from indiscriminately releasing prisoners, because the purpose was likely directed primarily to the Proposition 57 provisions affecting adult parole eligibility. Furthermore, the People conclude that the elimination of the small class of convicted juvenile offenders from the prison population will have the opposite intended effect, of causing highly dangerous and violent juvenile

offenders to be automatically released earlier than had they been prosecuted and sentenced in adult court.

Alexander C. adequately addressed and appropriately rejected this objection. By requiring most juvenile offenders under the age of 16 to remain in juvenile court, SB 1391 avoids indiscriminate release of juvenile offenders by attempting to rehabilitate them, and advances Proposition 57's purpose of reducing prison overcrowding in response to the 2009 federal court order under the Prison Litigation Reform Act of 1996. (*Coleman v. Schwarzenegger* (2009) 922 F.Supp.2d 882, 962; see Voter Information Guide, Gen. Elect., *supra*, text of Prop. 57 p. 141 [identifying a purpose of "[p]revent[ing] federal courts from indiscriminately releasing prisoners"].)

D. *Implied Purpose of Proposition 57*

The People contend that SB 1391 is unconstitutional because it is inconsistent with Proposition 57's implied purpose and intent to continue the practice of permitting prosecution of 14 and 15 year olds in adult court for serious or violent offenses. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1002.) We agree with the following three reasons stated in *Alexander C.*, rejecting this contention.

First, the practice of allowing prosecution of certain 14 and 15 year olds in adult court "is not an 'actual change[ ]' wrought by Proposition 57, but a continuation of prior practice." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1002.) Proposition 57 effected change to *the procedure* for prosecuting minors in adult court, by barring a district attorney from directly filing charges against a minor in adult court and by requiring a judge to approve transferring a minor to the adult court. Proposition 57 "did not

expand—and was not intended to solidify—the class of juvenile offenders subject to that procedure." (*Id*. at p. 1003.)

Second, any amendment will change an initiative's scope or effect, but this does not necessarily result in the amendment being inconsistent with the initiative's intent or purpose. To conclude otherwise would prevent Proposition 57 from ever being amended, and there would be no purpose to including the language in Proposition 57 "expressly allowing legislative amendments that 'are consistent with and further the intent' of the proposition. (Voter Information Guide, Gen. Elect., *supra*, text of Prop. 57, § 5, p. 145.)." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1003.) This court must look to the initiative as a whole to discern its purpose, rather than defining the intent of the initiative "at a level so granular as to equate that intent with each of the specific provisions in the initiative." (*Ibid*.) In doing so, the California Supreme Court in *People v. Brown* (2016) 63 Cal.4th 335, 354, described Proposition 57's purpose and intent as "address[ing] *the process* for transferring minors to adult court for criminal prosecution, and expand[ing] parole suitability review for state prisoners." (Italics added.) SB 1391 is consistent with this general purpose.

Third, the drafting history of Proposition 57 does not undermine the conclusion that SB 1391 is consistent with Proposition 57's purpose and intent, and therefore is constitutional. The court in *Alexander C.* acknowledged that, before the election, the proponents of Proposition 57 intentionally omitted language that would have had the same effect as SB 1391. The *Alexander C.* court recognized that this change "is most persuasive to the conclusion that the [initiative] should not be construed to include the

omitted provision." (*People v. Soto* (2011) 51 Cal.4th 229, 245; accord, *Alexander C.*, *supra*, 34 Cal.App.5th at p. 1004.) But *Alexander C.* rejected the district attorney's argument that this history undermined the constitutionality of SB 1391.

The court in *Alexander C.* explained that the district attorney confused statutory construction of a specific provision of law with determination of the purpose and intent of Proposition 57. The *Alexander C.* court concluded that "Proposition 57's drafting history confirms what is in any event clear from the initiative's text, namely that Proposition 57 cannot itself be construed to prevent district attorneys from seeking transfer to criminal court of 14 and 15 year olds accused of serious or violent crimes. But nobody has argued that Proposition 57 prevents Alexander's case from being transferred to criminal court. It is [SB] 1391 that accomplishes this result. And nothing about the intent of Proposition 57, as it can be inferred from examining the initiative as a whole, is inconsistent with this result." (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1004.)

The court in *K.L.* also rejected the argument that the drafting history of Proposition 57 demonstrates that SB 1391 is inconsistent with Proposition 57, because Proposition 57, as initially proposed, contained language that would have established 16 as the minimum age at which juveniles may be transferred to adult court. (*K.L.*, *supra*, 36 Cal.App.5th at p. 536.) *K.L.* noted that, "Because that version of the proposition was not voted on by the voters or included in the official materials provided to the voters, it does not provide us any indication of the voters' intent in approving Proposition 57. (See *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 802 [declining to consider material that was not presented to the voters as evidence of the voters' intent]; see also *Board of*

Supervisors v. Lonergan (1980) 27 Cal.3d 855, 866 ['ballot pamphlets may constitute the only legislative history of an initiative measure adopted by the voters'].)" (*K.L.*, *supra*, at p. 536, fn. 4.)

The court in *T.D.* likewise rejected the People's argument relying on the history of Proposition 57. *T.D.* acknowledged that the drafters of Proposition 57 clearly were aware of arguments for and against transfer of 14 and 15 year olds to criminal court and rejected barring 14 and 15 year olds from transfer to adult court. (*T.D.*, *supra*, 38 Cal.App.5th at p. 376.) The *T.D.* court explained that "Unlike inferences to be drawn from amendments made during the legislative process, however, we cannot conclude from drafting changes made prior to an initiative measure's submission to voters that *voters* were aware of, and so necessarily rejected, the measure's original provisions. The California Supreme Court 'has made it clear that the "motive or purpose of the drafters of a statute is not relevant to its construction, absent reason to conclude that the body which adopted the statute was aware of that purpose and believed the language of the proposal would accomplish it. [Citations.] The opinion of drafters or legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and we cannot say with assurance that the voters were aware of the drafters' intent. [Citations.]" [Citation.]' [Citations.] Nothing in Proposition 57's text or the accompanying materials suggested the initiative was *rejecting* 16 years old as the minimum age for transfer to criminal court. [Citation.]" (*Id.* at pp. 376-377.)

We thus conclude that, although Proposition 57 retained the ability to prosecute in adult court a limited category of 14- and 15-year-old juvenile offenders, Proposition 57's

"overriding purpose was to channel more juvenile offenders into the juvenile justice system and to have a juvenile court judge make the transfer decision if one was to be made, not to set in stone the age parameters for such a determination. That Proposition 57 permitted the transfer of 14 and 15 year olds to criminal court in some circumstances does not mean precluding such transfer is inconsistent with and/or does not further the intent of the Act, particularly when we take into account that voters desired the Act to 'be broadly construed to accomplish its purposes.' (Voter Information Guide, *supra*, text of Prop. 57, § 5, p. 145.)" (*T.D.*, *supra*, 38 Cal.App.5th at p. 374.) We reject the proposition that the intent of Proposition 57 was to preserve prosecutors' ability to request the juvenile court to transfer 14 and 15 year olds to adult court.

Proposition 57 changed the procedure for prosecuting juveniles, thereby reversing the previous trend towards increased prosecution of juveniles in adult court. (Voter Information Guide, Gen. Elect., *supra,* analysis by the Legislative Analyst for Prop. 57, p. 57 ["As a result of these provisions, there would be fewer youths tried in adult court."].) SB 1391 is consistent with Proposition 57's the overriding purpose of channeling more juvenile offenders into the juvenile justice system, in furtherance of rehabilitating offenders in juvenile court. In evaluating Proposition 57 as a whole in discerning its purpose, we conclude SB 1391 is consistent with Proposition 57's general purpose and therefore is constitutional. (*Alexander C.*, *supra*, 34 Cal.App.5th at p. 1003.)

VI.

DISPOSITION

The People's petition for writ of mandate is denied. The stay issued by this court on May 28, 2019, shall expire when this decision becomes final.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

MENETREZ
J.